United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

77-7221

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P/S

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

JOHN P. LOEBIG,

Appellant,

v.

GEORGE H. LARUCCI,

Appellee.

ON APPEAL FROM THE VERDICT OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK AT CIVIL No. 73-CV-158.

UNITED STATES COURT OF APPEALS
FILED
DEC 2 1971
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

BRIEF FOR APPELLANT

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STATUTES

Title 62A N.Y. Cons. Stat. §1180 (a), (e). 1, 2, 3,

STANDARD OF REVIEW

Whether the District Court property interpreted and applied the Legal Precept.

ISSUES PRESENTED FOR REVIEW

1. Did the District Court Judge err in refusing to charge the jury that the defendant had a duty to appropriately reduce his speed at an intersection?

2. Did the District Court Judge err in refusing to charge the jury that the defendant had a duty to appropriately reduce his speed as he entered the intersection in excess of the speed limit in heavy traffic?

STATEMENT OF THE CASE

This case arose as a result of an accident at the intersection of Bayern Street and Muenchener Street in Nurnberg (Bavaria) Germany on April 26, 1971. The intersection is a cross intersection with four lanes and a medial strip running east and west and four lanes and a medial strip running north and south (25a, 26a).

At the time of the accident the plaintiff was a passenger on defendant's motorcycle (24a) traveling east on Bayern Street. As the defendant approached the intersection, about 200 feet from the intersection (27a) he was traveling about 35 miles per hour (46a). When he entered the intersection with heavy traffic (29a) he was traveling at the same rate of speed (27a, 28a, 46a) and at the point of impact with an automobile, in the middle of the intersection (36a), angled to make a left turn, traveling in the opposite direction on the same street (36a) the defendant was still traveling at the same rate of speed, 35 miles per hour (46a).

As a result of this accident the plaintiff sustained serious head injuries (12a, 13a, 14a, 15a, 16a).

The case was tried by a jury in Albany, New York, in the United States Court for the Northern District of New York and a verdict of no cause of action was found on April 7, 1977.

The plaintiff submitted points for charge, the first of which was as follows:

> "1. If you find that the defendant failed to drive his motorcycle at an appropriate reduced speed as he approached the intersection, and that such failure was the proximate cause of the plaintiff's injuries, then you must find for the plaintiff." (95a). Title 62A N.Y. Cons. Stat. §1180 (a), (e).

STATEMENT OF CASE - Continued

The plaintiff also requested that the Vehicle and Traffic Law, New York Law Title 62A, N.Y. Cons. Stat. §1180 (a), (e), be read to the jury (55 a).

ARGUMENT

Although the accident in this case occurred in Germany, the District Court properly applied New York Law as to the liability (54a). Hogan v. Q. T. Corp. 230 Md. 69, 185 A.2d 491 (1962); Gaipo v. Gaipo, 102 R.I. 28, 227 A.2d 581 (1967). 1700 Ocean Ave. Corp. v. GBR Associates, 354 F.2d 993 (9th Cir. 1965). San Rafael Compania Naviera v. American Smelting & Refining Co., 327 F.2d 581 (9th Cir. 1964). Tidewater Oil Co. v. Waller, 302 F.2d 638 (10th Cir. 1962). Mastics v. Kiraly, 26 Ohio Op.2d 266, 196 N.E.2d 172 (P. Ct. 1964).

However, the court refused to charge the jury as to the applicable Vehicle and Traffic Law of New York as was set forth in plaintiff's Points for Charge (97a, 98a), (55a, 56a, 57a) and as was requested by plaintiff that the court read the statute to the jury (55a).

The applicable Vehicle & Traffic Law of New York, refused by the District Court cited in New York Law Title 62A N.Y. Con. Stat. Section 1180 (a), (e) is as follows:

> "(a) No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.
>
> (e) The driver of every vehicle shall, consistent with the requirements of subdivision (a) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when any special hazard exists with respect to predestrians, or other traffic by reason of weather or highway conditions."

ARGUMENT - Continued

It was admitted by the defendant that he drove his motorcycle in heavy traffic (45 a) into an intersection at 35 miles per hour (46 a) in excess of the lawful speed of 31 miles per hour (99a) (100a, 101a, 102a) without appropriately reducing his speed (27a, 28a) as was required by New York statutory law. People v. Nappi, 272 N.Y. S.2d, 347; Nourse v. Welsh 257 N.Y. S2d 96, 23 App Div. 2d 618.

CONCLUSION

It is respectfully submitted that the defendant by his own testimony was in violation of New York statutory law in failing to reduce the speed of his vehicle from the time he approached the intersection where an accident causing injury to the plaintiff occurred, to the time he ran into an automobile making a left turn across his line of travel in the middle of a very large intersection. This violation was at least evidence of negligence and that the jury should have been so charged by the lower court.

Further, it is evident from the testimony that the defendant, although he testified at one point that he was traveling in heavy traffic, at the rate of 30-35 miles per hour, clearly at another point in his testimony he admitted that he was traveling 35 miles per hour where the speed limit was 31 miles per hour according to a police report make part of the record.

Respectfully submitted

George E. Loebig, Esq.
Attorney for Appellant

AFFIDAVIT OF SERVICE BY MAIL

John E. Loebig vs.
George H. Larucci

State of New York)
County of Genesee) ss.: 77-7221
City of Batavia)

I, Leslie R. Johnson **being duly sworn, say: I am over eighteen years of age and an employee of the Batavia Times Publishing Company, Batavia, New York.**

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Pittsburgh, Pa. 15219

Leslie R. Johnson

Sworn to before me this
30th **day of** November, **19**77

Patricia A. Lacey

PATRICIA A. LACEY
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 19 79